



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Chemung Contracting Corporation
FOR
Chemung Contracting Corporation - Gainesville
VPDES Permit Registration No. VAR051949**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Chemung Contracting Corporation, regarding the Chemung Contracting Corporation – Gainesville facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Chemung Contracting Corporation" means Chemung Contracting Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Chemung Contracting Corporation is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" or "Site" means the Chemung Contracting Corporation – Gainesville facility located at 7201 Rail Line Ct, Gainesville, Virginia 20155, from which discharges of stormwater associated with industrial activity occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024. Chemung Contracting Corporation applied for registration under the Permit and was issued Registration No. VAR051949.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9

VAC 25-31-10.

16. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
18. "TMDL" means Total Maximum Daily Load, the calculation of the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet and continue to meet water quality standards for that particular pollutant.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Chemung Contracting Corporation owns and operates the Chemung Contracting – Gainesville asphalt production facility located at 7201 Rail Line Court, Gainesville, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Chemung Contracting Corporation to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary of Rocky Branch, in strict compliance with the terms and conditions of the Permit.
3. Rocky Branch is located in the Potomac River Basin. DEQ's 305(b) report does not list any applicable downstream impairments.

4. DEQ staff conducted a file review for the Facility, and observed that preceding storm event data on the July through December 2018, and January through June 2019, effluent limitation DMRs reported preceding storm events of less-than 72 hours.
 - a. Permit Condition Part I.A.2.b states in part, "A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours..."
5. During a file review of the Facility, DEQ staff also observed that Chesapeake Bay TMDL calculations were due to be submitted to DEQ before March 31, 2020, and were not received until June 9, 2020.
 - a. Permit Condition Part I.B.8.d states, "The Permittee shall submit a copy of the calculations to the department within 90 days from the end of the last monitoring period that satisfies the monitoring requirement in Part I.B.8.a. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP."
6. DEQ VPDES compliance staff conducted an inspection of the Facility on July 15, 2020, and observed the following deficiencies:
 - a. Chemung Contracting Corporation was conducting monthly and quarterly inspections at the Facility to satisfy the requirements of the Routine Facility Inspection. These monthly and quarterly Routine Facility Inspections did not indicate the name of the inspector and weather information.
 - i. Permit Condition Part III.B.5, Routine Facility Inspections, states in part, "...The results of the inspections shall be documented in the SWPPP and shall include at a minimum: ...b. The names of the inspectors; c. Weather information and a description of any discharges occurring at the time of the inspection..."
 - b. Quarterly visual monitoring evaluation forms did not denote the nature of the discharge (i.e., runoff or snowmelt) and were not signed and certified.
 - i. Permit condition Part I.A.1.a, Quarterly Visual Monitoring, states in part, "(1) The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall... The documentation shall be signed and certified in accordance with Part II.K of this permit... (3) The visual examination reports shall be maintained on-site with the SWPPP. The report shall include... the nature of the discharge (i.e., runoff or snow melt)..."

- c. A pile of asphalt bag house dust and an adjacent stormwater pond was observed during the July 15, 2020, inspection. The bag house dust was adjacent to the western drainage swale, and there was evidence that the bag house dust was overtopping the berm into the western drainage swale.
 - i. Permit Condition Part III.B.4.b.(2), Eliminating and Minimizing Exposure, states in part, "To the extent practicable, manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff..."
- d. The facility's site map and SWPPP did not include the asphalt bag house dust pile, adjacent stormwater pond, and drainage swale on the western portion of the property.
 - i. Permit Condition Part III.B, Contents of the SWPPP, states in part, "2. Site description. The SWPPP shall include the following:... b. A site map identifying the following:... (3) The locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate which direction stormwater will flow; (4) Locations of all stormwater control measures, including BMPs;... (6) Locations of all potential pollutant sources identified under Part III.B.3..."
 - ii. Permit Condition Part III.B.3, Summary of potential pollutant sources, states in part, "The SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater..."
- e. During the July 2020 inspection, sediment accumulation was observed beside the drop inlet adjacent to the asphalt storage silos.
 - i. Permit Condition Part III.B.4.b.(1), Good Housekeeping, states in part, "The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. The permittee shall perform the following good housekeeping measures to minimize pollutant discharge... (e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge..."
- f. Following the July 2020 inspection, DEQ requested the annual outfall evaluations for unauthorized discharges for 2017, 2018, and 2019, and copies of these documents meeting the requirements of the Permit were not received.

- i. Permit Condition Part III.D.2, Annual outfall evaluation for unauthorized discharges, states in part, “a. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges...”
- g. The effluent limitation monitoring DMR for Outfall 001 for the July through December 2018 monitoring period did not report values for Oil and Grease. This violation was discovered in a document review during the July 15, 2020, inspection; a revised electronic DMR was received on September 1, 2020 to correct the record.
 - i. Permit Condition Part I.A.1.c.(1)(a) states in part, “Facilities subject to stormwater effluent limitation guidelines (Table 70-2) are required to monitor such discharges to evaluate compliance with numerical effluent limitations.”
 - ii. Permit Condition Part I.A.2.d.(2), Benchmark monitoring, effluent limitation monitoring, and impaired waters monitoring (for waters both with and without an approved TMDL), states in part, “Monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June and July through December.”
 - iii. Permit Condition Part I.A.5.a, Reporting to the Department, states in part, “The permittee shall follow the reporting requirements and deadlines below for the types of monitoring that apply to the facility...”
 - iv. Permit Table 70-4, labeled Monitoring Reporting Requirements, states in part, “Semiannual monitoring results shall be submitted on a discharge monitoring report by January 10 and July 10. Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II.C.”
- 7. NRO issued Warning Letters and a Notice of Violation for the violations noted above as follows: WL No. W2019-02-N-1033, issued February 25, 2019; WL No. W2018-08-N-1036, issued August 26, 2019; WL No. W2020-05-N-1008, issued May 19, 2020; and NOV No. W2020-08-N-0004, originally issued August 26, 2020, and reissued September 29, 2020.
- 8. Chemung Contracting Corporation responded to the NOV on September 1 and December 7, 2020, with a report on corrective actions, adequately addressing the items described in paragraphs C.6.a, b, c, d, e, and g. No annual outfall evaluation documentation for 2017, 2018, or 2019 meeting the conditions of Permit Part III.D.2 was received: Chemung Contracting Corporation submitted Comprehensive Site Compliance Evaluations (a component of the 2014-2019 general permit), which contain several of the same elements as the annual outfall evaluations, however is not a permit-sanctioned substitute.

9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
10. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued the following permits or certificates to Chemung Contracting Corporation at the Chemung Contracting Corporation – Gainesville site other than under VPDES Permit No. VAR05: air mNSR identification number 73244; and aboveground storage tank identification number 3040834.
13. The unnamed tributary of Rocky Branch is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
14. Based on the results of the July 15, 2020, inspection and Facility file reviews, the Board concludes that Chemung Contracting Corporation has violated conditions Permit Part III.B.5, Part I.A.1.a, Part III.B.4.b.(2), Part III.B.2.b, Part III.B.3Part III.B.4.b.(1), Part III.D.2, Part I.A.1.c.(1)(a), Part I.A.2.d.(2), Part I.A.5.a, Table 70-4, Part I.B.8.d, and Part I.A.2.b of the Permit as noted in paragraph C.1 through C.14 of this Order.
15. In order for Chemung Contracting Corporation to complete its return to compliance, DEQ staff and Chemung Contracting Corporation have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Chemung Contracting Corporation, and Chemung Contracting Corporation agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,817 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Chemung Contracting Corporation shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Chemung Contracting Corporation shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Chemung Contracting Corporation for good cause shown by Chemung Contracting Corporation, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Chemung Contracting Corporation admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, findings of fact and conclusions of law in this Order.
4. Chemung Contracting Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Chemung Contracting Corporation declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Chemung Contracting Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chemung Contracting Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Chemung Contracting Corporation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chemung Contracting Corporation shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days; of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

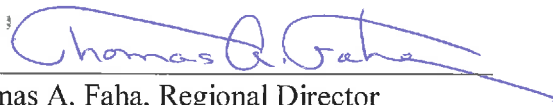
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Chemung Contracting Corporation. Nevertheless, Chemung Contracting Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Chemung Contracting Corporation has completed all of the requirements of the Order;
 - b. Chemung Contracting Corporation petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Chemung Contracting Corporation.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chemung Contracting Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Chemung Contracting Corporation and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Chemung Contracting Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Chemung Contracting Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chemung Contracting Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Chemung Contracting Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of June, 2021.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Chemung Contracting Corporation voluntarily agrees to the issuance of this Order.

Date: 3/31/2021 By: [Signature] President
(Person) (Title)
Chemung Contracting Corporation

Commonwealth of Virginia
City/County of Chapin

The foregoing document was signed and acknowledged before me this 31st day of March, 2021, by Edward C. Dalrymple, Jr. who is President of Chemung Contracting Corporation, on behalf of the corporation.

[Signature]
Notary Public

7017530
Registration No.

My commission expires: 02/28/2022

Notary seal:

**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Annual Outfall Evaluations

- a. Chemung Contracting Corporation shall submit its 2021 Annual Outfall Evaluation by December 31, 2021, with evaluation criteria meeting the requirements set forth in Part III.D.2 of the Permit.

2. DEQ Contact

Unless otherwise specified in this Order, Chemung Contracting Corporation shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**